



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 14 2008

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: NPDES Stormwater Construction General Permit Enforcement

FROM: Granta Y. Nakayama
Assistant Administrator

A handwritten signature in black ink, appearing to read "Granta Y. Nakayama", written over the printed name and title.

TO: Regional Administrators, Regions I-X

This memo is to inform you of a temporary gap in the Clean Water Act's National Pollutant Discharge Elimination System's (NPDES) storm water construction general permit (CGP) coverage for discharges from new and unpermitted ongoing construction projects in several states, the territory of Puerto Rico and Indian Country, and for discharges from certain federal facilities and oil and gas operations. Entities in the following areas are not yet eligible for permit coverage: the State of New Hampshire; Indian country within the State of New York; the Commonwealth of Puerto Rico; Indian country within the State of Michigan; Indian country within the State of Minnesota; Indian country within the State of Wisconsin, except the Sokaogon Chippewa (Mole Lake) Community; Indian country within the State of Oklahoma; Indian country within the State of New Mexico; oil and gas, or geothermal energy, operations in Texas; oil and gas operations, or certain point source discharges associated with agriculture and silviculture in Oklahoma; Federal Facilities in the State of Colorado, except those located in Indian country; Indian country within the State of Colorado, as well as the portion of the Ute Mountain Reservation located in New Mexico; and Indian country within the State of Montana.

The current CGP expired at midnight on July 1, 2008. EPA's Office of Water issued the 2008 CGP on June 30, 2008, which contains substantially similar terms and conditions as the 2003 CGP. Because certifications required by Section 401 of the Clean Water Act, and the Coastal Zone Management Act, were not received in time, new and unpermitted ongoing construction projects in those areas listed above where EPA is the permitting authority are not yet eligible for coverage under the 2008 CGP.

As a result of this gap in coverage, OECA has determined that administrative or civil enforcement actions involving affected entities will be a low enforcement priority for the next 60 days or until the CGP becomes effective in these areas, whichever occurs first. This low enforcement priority does not apply to criminal violations or to situations where there are egregious circumstances, such as those resulting in serious actual harm or which may present an imminent and substantial endangerment to public health or the environment. OECA also reserves the right, at any time, to initiate an appropriate enforcement response with respect to a specific discharger should circumstances warrant.

Under this low enforcement priority approach, OECA will not pursue actions against dischargers that lack a permit, but are meeting the obligations that would have been imposed by the expired 2003 CGP. These obligations include, but are not limited to, complying with the required effluent limitations, Stormwater Pollution Prevention Plan requirements, inspections, and proper selection, installation, and maintenance of stormwater control measures.

This low enforcement priority approach for construction facilities is limited to areas where the CGP is not effective and will terminate in 60 days or when the CGP becomes effective in these areas, whichever occurs first. If you have any questions about this matter please, contact me or have your staff contact Mark Pollins, Director of the Water Enforcement Division at (202) 564-4001 or Elyse DiBiagio-Wood, Attorney-Advisor in the Water Enforcement Division at (202) 564-8187.

cc: Benjamin H. Grumbles, Assistant Administrator, Office of Water
Patricia K. Hirsch, Acting General Counsel